

Attachment 2

From: Noam Greenspan <ngreenspan@talkinlaw.com>
Sent: Tuesday, April 9, 2024 4:01 PM
To: Burshteyn, Michael; McDonough, Lara
Cc: Frentzen, William; Rafael Yakobi; tian.huang@usdoj.gov; Davis, Peter (USANYS); Burnett, Thomas (USANYS); Sam Talkin; Rezkalla, Justin Kareem; Ashley Martabano; Riley Smith; Brian Klein
Subject: RE: Rule 17

External Email



This message needs your attention

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Mike,

As stated last night, even the case you cited, *Donziger*, involved the Court's review of documents for privilege. Because we can't seem to make progress on this issue, we'll submit a letter shortly asking the Court to intervene tomorrow at 8:30.

Regards,

Noam Greenspan

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New York, New York 10005

(212) 482-0007 (office) | (212) 584-0150 (direct)

ngreenspan@talkinlaw.com

From: Burshteyn, Michael <MBurshteyn@mofo.com>

Sent: Tuesday, April 9, 2024 6:54 PM

To: Noam Greenspan <ngreenspan@talkinlaw.com>; McDonough, Lara <LMcDonough@mofo.com>

Cc: Frentzen, William <WFrentzen@mofo.com>; Rafael Yakobi <rafael@thecryptolawyers.com>; tian.huang@usdoj.gov; Davis, Peter (USANYS) <Peter.Davis2@usdoj.gov>; Burnett, Thomas (USANYS) <Thomas.Burnett@usdoj.gov>; Sam Talkin <samt@talkinlaw.com>; Rezkalla, Justin Kareem <JRezkalla@mofo.com>; Ashley Martabano <amartabano@waymakerlaw.com>; Riley Smith <rsmith@waymakerlaw.com>

Subject: RE: Rule 17

Noam, thanks for your email. Again, Mango Labs has already produced material far in excess of what the subpoena required. You still have provided no authority for your request for granular details of privileged communications. Today when we spoke you said you would cite authority in support of your position to

the Court in the morning, yet declined to explain what that authority would be. Once again, can you please provide it to us?

Thank you,
Mike

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**MORRISON
FOERSTER**

From: Noam Greenspan <ngreenspan@talkinlaw.com>

Date: Monday, Apr 08, 2024 at 9:44 PM

To: Burshteyn, Michael <MBurshteyn@mofo.com>, McDonough, Lara <LMcDonough@mofo.com>

Cc: Frentzen, William <WFrentzen@mofo.com>, Rafael Yakobi <rafael@thecryptolawyers.com>, tian.huang@usdoj.gov <Tian.Huang@usdoj.gov>, Davis, Peter (USANYS) <Peter.Davis2@usdoj.gov>, Burnett, Thomas (USANYS) <Thomas.Burnett@usdoj.gov>, Sam Talkin <samt@talkinlaw.com>, Rezkalla, Justin Kareem <JRezkalla@mofo.com>, Ashley Martabano <amartabano@waymakerlaw.com>, Riley Smith <rsmith@waymakerlaw.com>

Subject: RE: Rule 17

External Email

Mike,

Donziger stands for the proposition that a Rule 17 subpoena respondent doesn't need to produce a privilege log. We haven't asked you for one. I don't understand why you believe you can withhold documents without stating any basis that would allow the defense to challenge and the court to review. *Donziger* clearly doesn't support that position. We're happy to confer with you on a process for resolving this dispute, but thus far you have refused to offer a proposal or otherwise engage with us on the matter.

Your arguments regarding burden, scope, and possession are unfounded and have been rejected by the Court.

We appreciate your production and will review it in short order. We will await the government's comments to the Protective Order and then revert to you on that, as well.

Regards,
Noam

From: Burshteyn, Michael <MBurshteyn@mofo.com>

Sent: Monday, April 8, 2024 9:22 PM

To: Noam Greenspan <ngreenspan@talkinlaw.com>; McDonough, Lara <LMcDonough@mofo.com>

Cc: Frentzen, William <WFrentzen@mofo.com>; Rafael Yakobi <rafael@thecryptolawyers.com>; tian.huang@usdoj.gov;

Davis, Peter (USANYS) <Peter.Davis2@usdoj.gov>; Burnett, Thomas (USANYS) <Thomas.Burnett@usdoj.gov>; Sam Talkin <samt@talkinlaw.com>; Rezkalla, Justin Kareem <JRezkalla@mofo.com>

Subject: RE: Rule 17

Thank you Noam. Please see the attached with edits and comments for everyone's review.

We will send out Mango Labs, LLC's second production via Kiteworks shortly. As discussed and agreed, we will have produced responsive, non-privileged documents based on a diligent review. The timing of the subpoena and what we still maintain is a fishing expedition resulted in immense burden on Mango Labs. What Mango Labs has produced is far in excess of what the subpoena, even purportedly narrowed, requires given that Mango Labs does not control any communications.

We produce, again, with the understanding based on our agreement that the production will not be used for any purpose other than preparation until a reasonable protective order is in place.

Regarding your requests for granular details on privilege review, please provide us authority for this in the Rule 17 context. This too is another example of the harassing and overly burdensome nature of this subpoena. There is no right to this information in the Rule 17 context. See *United States v. Donziger*, No. 11-CV-691 (LAK), 2021 WL 1865376, at *9 (S.D.N.Y. May 10, 2021).

Regards,
Mike

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**MORRISON
FOERSTER**

From: Noam Greenspan <ngreenspan@talkinlaw.com>

Sent: Monday, April 8, 2024 8:18 PM

To: McDonough, Lara <LMcDonough@mofo.com>; Burshteyn, Michael <MBurshteyn@mofo.com>

Cc: Frentzen, William <WFrentzen@mofo.com>; Rafael Yakobi <rafael@thecryptolawyers.com>; tian.huang@usdoj.gov; Davis, Peter (USANYS) <Peter.Davis2@usdoj.gov>; Burnett, Thomas (USANYS) <Thomas.Burnett@usdoj.gov>; Sam Talkin <samt@talkinlaw.com>

Subject: RE: Rule 17

External Email

Lara and Mike,

Given that the agreement now includes the government, I have copied them as well. Please see my comments to the protective order in the attached. If the government is willing to sign this, we are amenable subject to the changes we have made and any they wish to insert.

When can we expect the rest of the documents and the information regarding privilege?

Regards,
Noam

From: McDonough, Lara <LMcDonough@mofo.com>
Sent: Monday, April 8, 2024 3:54 PM
To: Sam Talkin <samt@talkinlaw.com>; Noam Greenspan <ngreenspan@talkinlaw.com>
Cc: Frentzen, William <WFrentzen@mofo.com>; Burshteyn, Michael <MBurshteyn@mofo.com>; Rafael Yakobi <rafael@thecryptolawyers.com>
Subject: RE: Rule 17

Hi Sam,

Attached is an updated protective order and a redline showing the changes.

Best,
Lara

Lara McDonough
Associate
lmcdonough@mofo.com
T: +1 (415) 815-5810

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San Francisco, CA 94105

**MOORRISON
FOERSTER**

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From: Burshteyn, Michael <MBurshteyn@mofo.com>
Sent: Monday, April 8, 2024 12:36 PM
To: Sam Talkin <samt@talkinlaw.com>
Cc: Noam Greenspan <ngreenspan@talkinlaw.com>; Rafael Yakobi <rafael@thecryptolawyers.com>; Frentzen, William <WFrentzen@mofo.com>; McDonough, Lara <LMcDonough@mofo.com>
Subject: RE: Rule 17

Sam, adding Lara here who can send the updated PO. We sent the government the draft to review. We hope to align on the PO this afternoon and agree to it. We also will produce a smaller second set today.

Thanks,
Mike

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From: Sam Talkin <samt@talkinlaw.com>
Date: Monday, Apr 08, 2024 at 8:13 AM
To: Burshteyn, Michael <MBurshteyn@mofo.com>
Cc: Noam Greenspan <ngreenspan@talkinlaw.com>
Subject: Rule 17

External Email

Michael:

Thank you for the initial disclosure. As far as the Protective Order, there cannot be a provision for sealing. There is no legal grounds. The understood purpose of the PO is to ensure the documents will be used for their legally intended purpose and the defense is willing to accommodate that concern through a PO. Please send a very streamlined proposed PO so we can get this done.

We learned late last night that the government was provided with the documents as well. Did they sign a PO? Thank you.

Sam

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From: Burshteyn, Michael
Sent: Sunday, April 7, 2024 3:54 PM
To: Sam Talkin; Rafael Yakobi; Frentzen, William
Subject: RE: Eisenberg/Mango Subpoena

Thanks Sam, please also let us know when you can agree to the protective order and we can get it on file for the court to review tomorrow. We understand you will not actually use anything we produce for any purpose other than preparation until a reasonable protective order is in place.

Thanks,
Mike

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**MORRISON
FOERSTER**

From: Sam Talkin <samt@talkinlaw.com>
Date: Sunday, Apr 07, 2024 at 5:52 PM
To: Burshteyn, Michael <MBurshteyn@mofo.com>
Subject: Eisenberg/Mango Subpoena

External Email

Michael:

As we discussed on the phone moments ago, kindly permit this email to confirm that the documents that are produced by Mango Labs to the defense prior to our execution of a reasonable Protective Order (a proposed Order was just forwarded to us by your office) will not be used for any purpose other than trial preparation. However, this agreement which is made in furtherance of expediency, does not change our original position and intention to use any appropriate document at trial as a defense exhibit, on cross examination or for some other legally permissible purpose. Thank you.

Sanford Talkin, Esq.

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From: Sam Talkin <amt@talkinlaw.com>
Sent: Friday, April 5, 2024 8:41 AM
To: Burshteyn, Michael
Cc: rafael@thecryptolawyers.com
Subject: Re: Mango Subpoena

That works.

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[\(212\) 482-1303](#) fax

On Apr 5, 2024, at 11:10 AM, Burshteyn, Michael <MBurshteyn@mofo.com> wrote:

Hi Sam, we can call at noon ET if that works.

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<FF542A9A-DA9E-4313-AA72-5475C61AC582.jpg>

From: Sam Talkin <amt@talkinlaw.com>
Date: Thursday, Apr 04, 2024 at 6:50 PM
To: Burshteyn, Michael <MBurshteyn@mofo.com>
Cc: rafael@thecryptolawyers.com <rafael@thecryptolawyers.com>
Subject: Re: Mango Subpoena

I am around most of the day.

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On Apr 4, 2024, at 5:31 PM, Burshteyn, Michael <MBurshteyn@mofo.com> wrote:

Sam, can you please let us know your availability to discuss this tomorrow?

Thanks,
Mike

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<FF542A9A-DA9E-4313-AA72-5475C61AC582.jpg>

From: Sam Talkin <samt@talkinlaw.com>

Date: Tuesday, Apr 02, 2024 at 11:43 AM

To: Burshteyn, Michael <MBurshteyn@mofo.com>, rafael@thecryptolawyers.com
<rafael@thecryptolawyers.com>

Subject: Mango Subpoena

External Email

Mike and Rafael:

Per our phone call, we request that you produce the documents responsive to requests in the subpoena rider remaining after the Court's Order. (See Dkt. 121.) Regarding Term of Service and "Pop-up", if the government agrees to the authentication of the contents of the links you provided us, we do not need anything more. Regarding the surviving request, we asked you to look for (1) documents and communications within your possession regarding what you called the "exploit" and the reactions to it, and (2) documents and communications within your possession regarding the settlement. Also, as discussed, we are open to limiting the time frame if you make a good faith search and come back to us with your findings.

If you believe any responsive documents or communications are privileged, as we discussed, a traditional privilege log is not necessary; we are open to ideas you have on a less onerous method to document an explanation of what is privileged and why. To be clear, the Court's order requires a privilege log or documentation "otherwise explain[ing] the nature of the privilege [you] are claiming" and is still required. (Dkt. 121.)

We expect, as the subpoena commands, that you will produce responsive documents and communications on the first day of trial. As we stated on the call, the records we seek could be offered as direct evidence.

I am available to discuss these issues further. Thank you.

Sam

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From: Burshteyn, Michael
Sent: Sunday, April 7, 2024 11:37 AM
To: Sam Talkin; Rafael Yakobi; Frentzen, William
Subject: Protective Order
Attachments: Protective Order.docx

Sam, please see attached.

Thanks,
Mike

MICHAEL BURSHTEYN

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